

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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November 3, 2005

Memo To Counsel Re: MDL-15863, MFS Subtrack;
Hammerslough v. Massachusetts Financial Services Co., et al.
Civil No. JFM-04-1620

Dear Counsel:

The purpose of this letter is to rule upon the pending motions to dismiss the **consolidated amended fund derivative complaint** in the *Massachusetts Financial Services* subtrack.

Claims other than the section 36(b) claim. Motions are granted for the same reasons stated in the fund derivative opinion I issued in the *Janus* subtrack

Section 36(b) claim. For the reasons stated in the fund derivative opinion I issued in the *Janus* subtrack, I find that plaintiffs have a cognizable claim under section 36(b) of the Investment Company Act¹.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge

¹Although plaintiffs make certain allegations concerning the independent trustees, *see Consol. Am. Fund Derivative Comp.* ¶¶ 609-11, I do not understand plaintiffs to be making a section 36(b) claim against them. Count I, in which the section 36(b) claim is asserted, names as defendants only the “MSF Corporate Defendants.” If plaintiffs are asserting a section 36(b) claim against the independent trustees, they should so advise me and I will set a further briefing schedule as to that claim.